[APPELLATE CIVIL JURISDICTION]

POYSER, C.J. (F.M.S.), GORDON-SMITH, Ag. J.A. & MANNING, J.

July 6, 1940.

IN RE WEE GUAN HO DECEASED

FRANK MERRELLS & OTHERS

v.

WEE CHIN KOON.

[SINGAPORE CIVIL APPEAL No. 9 of 1940]

Probate and Administration Ordinance (Cap. 51) —S. 12 and S. 24 s.s. 2—Question of jurisdiction of Registrar to make grants of Letters of Administration.

Under S. 12 and S. 24 s.s. 2 of the Probate and Administration Ordinance (Cap. 51) a grant of Letters of Administration with the will annexed can only be made by the High Court or a Judge when sitting in open Court. The Registrar has no jurisdiction to make a grant of Letters of Administration under this section. A grant of Letters of Administration in any case cannot be made to a Petitioner who has no interest in the estate.

Cases referred to:—

(1) *Farquharson v. Morgan* (1894), 1 Q.B.D. p. 556.

(2) *Norwich Corporation v. Norwich Electric Tramways Ltd.* (1906), 2 K.B. 119.

APPEAL.

Roland Braddell and Aditan for the appellants.
R. C. H. Lim for the respondent.

The facts and arguments sufficiently appear from the judgments.

Cur. Adv. Vult.

Poyser, C.J. (F.M.S.)—This was an appeal from a judgment of Terrell, J.A. dismissing an application by the applicants (appellants) "for an order that the letters of administration *de bonis non* with the will annexed granted on the 29th January 1937 to Wee Chin Koon as one of the lawful children of Wee Teng Kee, a residuary legatee, under the will of the above deceased Wee Guan Ho, may be revoked and that a new grant may be made to the applicants." At the conclusion of the arguments before us we allowed the appeal with costs, and intimated that we would give our reasons in writing for so doing.

The following were the principal grounds upon which the appellants relied before Terrell, J.A.:—

"That the petition for the said letters of Administration presented by the said Wee Chin Koon on the 18th day of January 1937 did not comply with the provisions of Order 54 rule 4 with Form 70 of the Supreme Court Rules.

"That the said Wee Chin Koon did not, before proceeding with the petition, issue citations as provided in Order 54 rule 15 or obtain dispensation of such citation under Order 54 rule 16 of the Supreme Court Rules.

"That the said Wee Chin Koon is a person who has no legal title or interest in the above estate."

On the appeal, however, a fresh point was taken viz: that the above grant to the respondent was made without jurisdiction, and must be set aside '*ex debito justitiae*'. There is no doubt, in my opinion, that such was the case. These letters of administration were granted by the Registrar on 29th January 1937, but under the law in force at this date, only 'the Court' viz: the High Court or a Judge when sitting in open Court could make such a grant. This is clear from the provisions of S. 24 s.s. 2 of the Probate and Administration Ordinance, which is as follows:—

"On the death of an administrator, letters of administration may be granted in respect of any estate not fully administered and in granting such letters of administration the Court shall be guided by the same rules as apply to original grants."

Further, the general provisions of the above Ordinance in regard to the grant of Letters of administration all provide for such grants being made by the Court and not by the Registrar. The Registrar is given certain powers, *e.g.* under S. 6A (*notation of domicil*) and S. 28 (administration bonds), but he is not empowered, even on an *ex parte* application, to grant letters of administration.

Under the provisions of Chapter XL of the Civil Procedure Code 1907 (which was repealed by the above Ordinance), the Registrar did have power, in uncontested cases, to grant probate or letters of administration (see S. 1009), but he no longer has such power as regards letters of administration, and whether it was intended or not to re-enact this power when that chapter was repealed, there is no doubt, in my opinion that the legislature did not do so. Apparently, until comparatively recently, it was considered that this power of the Registrar was still in existence, but then so far as I know, a grant by the Registrar of letters of administration has until now not been questioned on the ground of jurisdiction.

The fact that the question of jurisdiction was not raised before Terrell, J.A. does not prevent the point from being taken in the Court of Appeal—see

Farquharson v. Morgan[1] and the following passage in the judgment of Halsbury, L.C.:—

> "It has been long settled that, when an objection to the jurisdiction of an inferior Court appears on the face of the proceedings, it is immaterial by what means and by whom the Court is informed of such objection. The Court must protect the prerogative of the Crown and the due course of the administration of justice by prohibiting the inferior Court from proceeding in matters as to which it is apparent that it has no jurisdiction."

See also *Norwich Corporation v. Norwich Electric Tramways Ltd.*[2] and the following passage in the judgment of Vaughan Williams, L.J.:—

> "I can only say with regard to that point that I have always supposed it to be well-established law that the objection that the tribunal has no jurisdiction to entertain the case is one which, at all events in reference to proceedings in the High Court, may be taken at any time."

On this ground alone then the appeal must be allowed, and it only remains to consider the question of costs. The question of jurisdiction was not raised before Terrell, J.A., and if this had been the only question raised on appeal, I should, in accordance with the general rule, have made no order as to costs; but if the appellants are also entitled to succeed on other grounds, they should have their costs. In my opinion, apart from any question of jurisdiction, the grant of letters of administration to the respondent should have been set aside.

The grounds of appeal (apart from that of jurisdiction) on which Mr. Braddell principally relied were:—

1. that the respondent in making his application did not issue citations as required by Order 54 r. 4, and he must have been aware of the existence and whereabouts of persons who had an equal or prior right to a grant;
2. that the respondent did not disclose material facts known to him to the Registrar;
3. that the respondent had no interest in the estate sought to be administered.

As only the question of costs is involved, it is unnecessary to examine Mr. Braddell's arguments in detail. I would only state that in my opinion as Wee Teng Kee was at the date of his death an undischarged bankrupt, all his assets were vested in the Official Assignee, and the respondent therefore had no interest. There is abundant authority for the proposition that a person who has no interest cannot obtain a grant. I would only refer to the following passage in *Tristram & Coote,* Probate Practice, (17th Edn.), at page 311:—

> "The Court revokes a grant made to a person who has no interest. Such a person may have obtained the grant fraudulently, and **mala fide**, in either of two ways, viz: by making a directly false suggestion, or by concealing from the Court something material to the case, which it should have known."

In this case I think it is clear that the respondent concealed from the Registrar not only his father's bankruptcy, but also a number of other material facts, and consequently the grant to him should be set aside, apart from any question of jurisdiction.

There is only one other matter. In the original application the appellants asked not only for the revocation of the grant to the respondent but also that a new grant be made to them. That matter was only briefly referred to on appeal, and Mr. Lim stated that the appellants had disposed of any interests they might have. On such material I do not think we should make the new grant originally applied for.

The grant of the 29th of January 1937 is accordingly set aside, and it will be open to any party or parties interested to make application for a fresh grant.

For the above reasons I consider the appeal should be allowed with costs.

Gordon-Smith, J.A.—I agree and have nothing to add.

Manning, J.—I concur.

Appeal allowed.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.